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In re Application of
BLACKSHEAR et al.
U.S. App. No.: 10/511,362
PCT No.: PCT/US03/12348
Int. Filing Date: 18 April 2003
Priority Date: 19 April 2002
Attorney Docket No.: 4239-64828-02
For: COMPOSITIONS AND METHODS FOR
DIAGNOSTICS AND THERAPEUTICS
FOR HYDROCEPHALUS

DECISION ON PETITION
UNDER 37 CFR 1.10

This decision is issued in response to applicants' (second) "Renewed Petition Under 37 CFR 1.10(d)" filed 17 January 2007 requesting that the above-identified application be accorded a corrected filing date of 15 October 2004, the date petitioner avers that the application was deposited via "Express Mail" pursuant to 37 CFR 1.10. In a decision dated 17 November 2006, applicants' "Renewed Petition Under 37 CFR 1.10" filed 18 September 2006 was dismissed without prejudice under 37 CFR 1.10(d).

The procedural background for this application was set forth in the decision mailed 17 November 2006.

DISCUSSION

Applicants presently request that the USPTO accord the above-identified national stage application a 35 U.S.C. 371(c) filing date of 15 October 2004. A review of the file reveals that the DO/EO/US correctly accorded a 35 U.S.C. 371(c) filing date of 14 October 2004 pursuant to 1.10(a). In the subject petition, applicants argue that the USPS incorrectly entered the "date-in" on the Express Mail label. 37 CFR 1.10(d) allows an applicant to petition to correct an incorrectly entered "date-in" of an Express Mail receipt and states that:

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered

or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being within one business day after deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

Applicants have satisfied Items (1) - (3).

In view of all of the evidence, it is reasonably concluded that the actual date of deposit of this application in the "Express Mail Post Office to Addressee" service of the USPS was 15 October 2004. In this regard, petitioner has provided a satisfactory showing under 37 CFR 1.10(d)(3).

Accordingly, it is appropriate to accord the above-identified national stage application a 35 U.S.C. 371(c) filing date of 15 October 2004.

CONCLUSION

Applicants' Renewed Petition Under 37 CFR 1.10(d) is GRANTED.

The Notification of Acceptance of Application Under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495 (Form PCT/DO/EO/903) mailed on 25 April 2005 is hereby VACATED.

The application has an international filing date of 18 April 2003 under 35 U.S.C. 363 and a date of 15 October 2004 under 35 U.S.C. 371(c).

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for treatment in accordance with this decision, that is, for mailing of a NOTIFICATION OF ACCEPTANCE OF APPLICATION (Form PCT/DO/EO/903) which identifies a date of 15 October 2004 U.S.C. 371(c) and preparation and mailing of a corrected Filing Receipt in accordance with this decision, that is a filing receipt that identifies a filing date of **15 October 2004**.

The application will be returned to Art Unit 2877 for further prosecution.

A handwritten signature in black ink, appearing to read "Anthony Smith", with a stylized flourish at the end.

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